

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
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PLR-101419-13

Date:
June 19, 2013

Re:

Legend

Decedent =
Spouse =
Son =
Trust =

Date 1 =

Dear :

This letter responds to your letter of December 29, 2012, requesting a ruling that, pursuant to Rev. Proc. 2001-38, 2001-1 C.B. 1335, the qualified terminable interest property (QTIP) election made with respect to a credit shelter trust established under the terms of Trust is a nullity for federal estate, gift, and generation-skipping transfer tax purposes.

The facts and representations submitted are summarized as follows. Decedent died testate on Date 1, survived by his wife, Spouse. Prior to Decedent's death, Decedent created Trust, a revocable trust, which became irrevocable upon Decedent's death. Under the terms of Decedent's will, Decedent bequeathed all of his real and tangible personal property outright to Spouse and bequeathed the rest and residue of any property, real or personal, to Trust.

Pursuant to the terms of Trust, upon Decedent's death, Trust became irrevocable and the trustee was directed to divide Trust into Trust 1 (a Marital Trust) and Trust 2 (a Credit Shelter Trust). Pursuant to Trust, the trustee is directed to allocate that fraction

of the trust estate that will pass free of federal and state death taxes to Trust 2. Under Trust 2, the trustee has discretion to pay so much of the net income and principal as is necessary for the health, education, support and maintenance of Spouse and Decedent's children. Any undistributed income shall be accumulated and added to principal. Upon Spouse's death, Trust 2 will continue for the benefit of Son. Trust 2 will terminate when Son reaches age 35 and the trust corpus is to be distributed to Son at that time.

Spouse, the executrix of Decedent's estate, allocated all of the assets of Trust to Trust 2 and did not establish Trust 1. Spouse, in her capacity as executrix, timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return and listed all of Decedent's assets that passed outright to Spouse and Trust 2 on Schedule M. Trust 2 was listed under QTIP property with the result that Decedent's estate was deemed to have made an election under § 2056(b)(7)(B)(v) to treat Trust 2 as qualified terminable interest property. With the assistance of new counsel, Spouse discovered that the QTIP election for Trust 2 was not necessary to reduce Decedent's estate tax liability to zero.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse, but only to the extent that the interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides that a deduction is not allowed under § 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest passing to the surviving spouse will terminate or fail, and (a) an interest in the property passes from the decedent to any person other than the surviving spouse (or the estate of such spouse), and (b) by reason of such passing the person (or his heirs or assigns) may possess or enjoy any part of the property after the termination or failure of the interest passing to the surviving spouse.

Section 2056(b)(7) provides an exception to the terminable interest rule contained in § 2056(b)(1). Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property (QTIP), for purposes of § 2056(a), the property shall be treated as passing to the surviving spouse and for purposes of § 2056(b)(1)(A), no part of the

property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines “qualified terminable interest property” as property: (1) which passes from the decedent, (2) in which the surviving spouse has a qualifying, income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

A QTIP election has transfer tax consequences for the surviving spouse. Section 2044(a) provides that the value of the gross estate will include the value of any property to which that section applies in which the decedent had a qualifying income interest for life. Section 2044(b)(1)(A) provides that § 2044 applies to any property if a deduction was allowed with respect to the transfer of the property to the decedent under § 2056 by reason of § 2056(b)(7).

Section 2519(a) and (b) provide that any disposition of all or part of a qualifying income interest for life in any property with respect to which a deduction was allowed under § 2056(b)(7) is treated as a transfer of all interests in the property other than the qualifying income interest.

Section 2652(a) provides that, in the case of property subject to an election under § 2056(b)(7), the surviving spouse will be treated as the transferor of the property for generation-skipping transfer tax purposes in the absence of a “reverse QTIP” election under § 2652(a)(3).

In general, under Rev. Proc. 2001-38, 2001-1 C.B. 1335, the Service will treat a QTIP election as null and void for purposes of §§ 2044(a), 2056(b)(7), 2519(a), and 2652, where the election was not necessary to reduce the estate tax liability to zero, based on values as finally determined for federal estate tax purposes. The revenue procedure provides an example where the decedent’s will provides for a “credit shelter trust” to be funded with an amount equal to the applicable exclusion amount under § 2010(c), with the balance of the estate passing to a marital trust intended to qualify under § 2056(b)(7). The estate makes QTIP elections with respect to both the credit shelter trust and the marital trust. The QTIP election for the credit shelter trust was not necessary, because no estate tax would have been imposed whether or not the QTIP election was made for that trust. See Rev. Proc. 2001-38, § 2.

In this case, a QTIP election to treat the assets of Trust 2 as QTIP was not necessary to reduce Decedent's estate tax to zero. That is, the estate tax liability would have been zero whether or not the election was made with respect to Trust 2. Accordingly, we rule that the QTIP election with respect to the value of the property passing to Trust 2 is null and void for purposes of §§ 2044(a), 2056(b)(7), 2519(a) and 2652. The property held in Trust 2 will not be includible in the gross estate under § 2044, and Spouse will not be treated as making a gift under § 2519 if Spouse disposes of the income interest with respect to the property. Further, the surviving spouse will not be treated as the transferor of the property for GST tax purposes under § 2652(a).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Lorraine Gardner
Senior Counsel
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for § 6110 purposes

cc: